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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,822	02/06/2004	Lotfi Hedhli	IR 3699 NP	7965

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PATENT DEPARTMENT - 26TH FLOOR
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PHILADELPHIA, PA 19103-3222

EXAMINER

TUROC, DAVID P

ART UNIT PAPER NUMBER

1762

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/773,822

Applicant(s)

HEDHLI ET AL.

Examiner

David Turocy

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2/13/2006 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The applicant argues against the Allen reference stating the reference teaches providing CVD process with diluting in an inert gas and the claims require the without adding noble gasses to the carrier gas. However, the examiner notes that while all noble gases are inert gas, not all inert gases are noble gases. The use of nitrogen as an inert carrier gas, which is not a noble gas, is discussed in the rejection dated 9/13/2005. Therefore using nitrogen as an inert gas reads on not adding a noble gas.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1762

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim 1, 4-5 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6159533 by Dearnaley et al ("Dearnaley") in view of US Patent 6077621 by Allen et al. ("Allen") and further in view of Kirk-Othmer and WO01/32949 by Förnsel et al ("Förnsel").

*** Please note US Patent 6800336 is the patent which issued from the national stage application based on WO 01/32949. This patent is being used as an English translation of WO 01/32949, therefore all references to column and line number are found in 6800336 ***

Claims 1, 3-5, and 11-13: Dearnaley discloses a method for depositing a catalyst on a fuel cell electrode for use in a membrane electrode assembly under high vacuum vaporization (abstract). Dearnaley discloses using a fuel cell electrode comprising a

Art Unit: 1762

carbon cloth and membranes including carbon particles (Column 2, lines 29-39).

Dearnaley discloses known polymer electrolyte membranes utilized in fuel cells including NAFION (Column 3, lines 30-34). Dearnaley discloses the preferred catalyst is platinum (Column 2, line 56). Dearnaley fails to disclose chemical vapor deposition at atmospheric pressure.

However, Allen discloses chemical vapor deposition (CVD) is a known substitute in the art for high vacuum vaporization to deposit metal films on polymer substrates (Column 2, lines 33-35). Allen discloses CVD normally occurs at atmospheric pressure and the constituents are often diluted using an inert carrier gas, but discloses CVD often operate at high temperatures for a polymer film (Column 2, line 58-Column 3 line 6). Substitution of equivalents requires no express motivation. *In re Fount*, 213 USPQ 532 (CCPA 1982); *In re Siebentritt* 152, USPQ (CCPA 1967).

Dearnaley in view of Allen teaches of atmospheric CVD deposition of metal films on polymer membranes and discloses CVD deposition is constrained by the high temperature, but fails to disclose plasma deposition. However, Kirk-Othmer, teaching of known chemical vapor deposition techniques, discloses plasma enhanced chemical vapor deposition (PECVD) enhances decomposition and reaction during coat formation (Page 1). Kirk-Othmer also discloses PECVD is utilized to give activation and partial reaction of the vapors so the substrate temperature can be reduced and still obtain similar quality films (Page 5). Kirk-Othmer discloses using plasma allows for equivalent

Art Unit: 1762

film to be deposited at several hundred degrees lower than that of a typical CVD (Page 5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Dearnaley in view of Allen to plasma enhance the chemical vapor deposition as suggested by Kirk-Othmer to provide a desirable metal coating on a polymer substrate because Dearnaley in view of Allen discloses CVD deposition on polymer substrates is hindered by high temperatures and Kirk-Othmer discloses PECVD is known in the art to provide deposition of high quality films at low temperatures and therefore would reasonably be expected to effectively provide metal films on a polymer substrate. It is well settled that the significance of evidence that a problem was known in the prior art is that knowledge of a problem provides a reason or motivation for workers in the art to apply their skill to its solution. *In re Nomiya*, 509 F.2d 566, 574, 184 USPQ 607, 613 (CCPA 1975).

While Dearnaley in view of Allen and further in view of Kirk-Othmer discloses an PECVD consists of an electrical discharge, they fail to disclose atmospheric plasma CVD by passing the reactants and the carrier gas through the electrical discharge (Page 1689, Column 2, last paragraph).

However, Förnsel, teaching a known method of plasma coating surfaces at atmospheric pressure, discloses passing reactants and the carrier gas through an electrical discharge at atmospheric pressure (abstract, column 4, lines 38-40). Förnsel discloses passing the reactants through a nozzle containing coaxially arranged

Art Unit: 1762

electrodes (Column 3, lines 1-2). Förnsel discloses that for coating large surfaces, attach one or more nozzles eccentrically over a rotating nozzle that scans the nozzles over the membrane (Column 3, lines 6-10). While the examiner notes Förnsel discloses polymerization coatings, Förnsel also suggests to one of ordinary skill in the art a method of atmospheric plasma coatings where any precursor material is reacted, by plasma, to form a coating.

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Dearnaley in view of Allen and further in view of Kirk-Othmer to use the atmospheric pressure plasma jet as suggested by Förnsel to provide a desirable catalyst coating on a fuel cell electrode with the reasonable expectation of success because Dearnaley in view of Allen and further in view of Kirk-Othmer teach of plasma spraying of metal on a polymer substrate and Förnsel teaches of a known atmospheric pressure plasma jet for coating surfaces that passes the reactants and a carrier gas through an electrical discharge.

Dearnaley in view of Allen and further in view of Kirk-Othmer and Förnsel fails to explicitly state using a carrier gas without adding a noble gas. Förnsel discloses using an inert gas as the carrier gas and discloses nitrogen as the carrier gas to prevent oxidation of the reactants of the precursor material (Column 5, lines 11-13).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to select any inert carrier gas, including nitrogen, because Förnsel

Art Unit: 1762

teaches of using nitrogen as the carrier gas to prevent oxidation of the reactants with the reasonable expectation of success.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dearnaley in view of Allen, Kirk-Othmer and Förnsel and further in view of Schütze et al ("Schütze").

Dearnaley in view of Allen, Kirk-Othmer and Förnsel teach all the limitations of these claims as disclosed in the 35 USC 103(a) rejection above, including providing an electrical discharge by coaxially-arranged electrodes, but the references fails to teach of parallel electrodes.

However, Schütze, teaching of an atmospheric plasma jet, discloses known and suitable methods for producing an electrical discharge include parallel electrode plates and coaxially arranged electrodes (Page 1690 Paragraph bridging column 1 and 2, Page 1689 Column 1 Last Paragraph). Therefore Schütze discloses parallel plate electrodes are equivalent to coaxially arranged electrodes for providing an electrical discharge during atmospheric plasma generation. Substitution of equivalents requires no express motivation. *In re Fount*, 213 USPQ 532 (CCPA 1982); *In re Siebentritt* 152, USPQ (CCPA 1967).

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dearnaley in view of Allen, Kirk-Othmer and Förnsel and further in view of US patent 6074692 by Hulett ("Hulett").

Dearnaley in view of Allen, Kirk-Othmer and Förnsel teach all the limitations of these claims as disclosed in the 35 USC 103(a) rejection above and Dearnaley discloses using plasma spray techniques such as chemical vapor deposition allow for deposition of materials over large areas through a reel-to-reel or web coating process, but they fail to explicitly teach of advancing the membrane beneath the nozzle (Column 2, Lines 12-19).

However, Hulett, teaching a method of making a PEM fuel cell, discloses applying a catalyst onto both faces of the strip by spraying as it passes underneath the nozzles (Column 5, lines 17-25, Figure 1).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Dearnaley in view of Allen, Kirk-Othmer and Förnsel to use the traversing membrane suggested by Hulett to provide a desirable PEM fuel cell with the reasonable expectation of success because Dearnaley in view of Allen, Kirk-Othmer and Förnsel teaches thermal spraying techniques provide for web coating processes and Hulett teaches a PEM web coating process includes advancing the membrane beneath the nozzle.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dearnaley in view of Allen, Kirk-Othmer and Förnsel further in view of US Patent Publication 2003/0096154 by Yasumoto et al ("Yasumoto").

Art Unit: 1762

Dearnaley in view of Allen, Kirk-Othmer and Förnsel teach all the limitations of these claims as disclosed in the 35 USC 103(a) rejection above, but they fail to teach spraying the catalyst on the surface of the polymer electrolyte membrane.

However, Yasumoto, teaching of a method for spraying a catalyst with a carrier gas, teaches of spraying the catalyst directly onto the surface of the polymer electrolyte film or onto a porous conductive electrode substrate (Paragraph 0014). Yasumoto also discloses by spraying directly onto the film, the catalysts particles become embedded in the film and therefore the cell performance is improved (Paragraph 0016).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Dearnaley in view of Allen, Kirk-Othmer and Förnsel to apply the catalyst directly onto the surface of the polymer electrolyte membrane as suggested by Yasumoto to provide a desirable catalyst layer on a electrolyte membrane with the reasonable expectation of success because Dearnaley in view of Allen, Kirk-Othmer and Förnsel teaches spraying a catalyst on a porous electrode film and Yasumoto teaches that spraying the catalyst directly onto the polymer electrolyte membrane increase the cells performance over a catalyst sprayed on a porous electrode film.

8. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearnaley in view of Allen, Kirk-Othmer, Förnsel and Yasumoto and further in view of US Patent Publication 2004/0180250 by Nanaumi et al ("Nanaumi").

Dearnaley in view of Allen, Kirk-Othmer, Förnsel and Yasumoto teach all the limitations of these claims as disclosed in the 35 USC 103(a) rejection above, but they fail to teach spraying the catalyst on the surface of the polymer electrolyte membrane comprising a acrylic based polyelectrolyte/fluoropolymer blend or a polyhydrocarbon-based sulfonic acid.

However, Nanaumi, polymer electrolyte membrane structures that provide inexpensive electrode structure and have excellent power generation efficiency, discloses using a hydrocarbon-based sulfonic acid (Paragraph 0007, 0010). Nanaumi teaches that such electrolyte polymer membranes comprise copolymers of an acrylic based polymer and a fluoropolymer (Paragraph 0012-0015).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Dearnaley in view of Allen, Kirk-Othmer, Förnsel and Yasumoto to use the polymer electrolyte membrane structure suggested by Nanaumi to provide a desirable catalyst on a membrane with the reasonable expectation of success because Dearnaley in view of Allen, Kirk-Othmer, Förnsel and Yasumoto teaches spraying catalyst onto a polymer electrolyte membrane and Nanaumi teaches of known polymer electrolyte membrane structures that are inexpensive and have excellent power efficiency.

9. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearnaley in view of Allen, Kirk-Othmer and Förnsel and further in view of US Patent Publication 2003/0059659 by Kamo et al ("Kamo").

Claims 14 and 15: Dearnaley in view of Allen, Kirk-Othmer and Förnsel teach all the limitations of these claims as disclosed in the 35 USC 103(a) rejection above, but they fail to teach of a catalyst layer including a platinum alloy or a binary and ternary platinum alloy using metals from column 4-11 of the periodic table.

However, Kamo, teaching of fuel cell equipment using an electrolyte membrane, discloses while the cathode catalysts is known to be fine platinum particles, the anode side comprise fine particles of platinum and ruthenium or platinum/ruthenium alloys (paragraph 0066). In addition Kamo discloses it is advantageous to combine the noble metal components with a third component selected from iron, tin, rare earth elements, etc. to stabilize and extend the life of the electrode (Paragraph 0067).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Dearnaley in view of Allen, Kirk-Othmer and Förnsel to use the platinum/ruthenium alloy as suggested by Kamo to provide a desirable catalyst layer on a electrolyte membrane with the reasonable expectation of success because Dearnaley in view of Allen, Kirk-Othmer and Förnsel teaches an polymer electrolyte membrane with a platinum catalyst layer and Kamo teaches that platinum/ruthenium alloy is a known substitute for platinum and ruthenium particles for an anode catalyst and additional elements increase the catalyst stability and life span.

Art Unit: 1762

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dearnaley in view of Allen, Kirk-Othmer and Förnsel and further in view of Haug et al ("Haug").

Dearnaley in view of Allen, Kirk-Othmer and Förnsel teach all the limitations of these claims as disclosed in the 35 USC 103(a) rejection above, but they fail to teach of depositing multiple catalyst layers.

However, Haug, teaching of increasing the PEM catalyst effectiveness, discloses using a multilayer electrode technique increases the regions of active platinum by increasing the number of platinum layers deposited (Pg A284, Column 2 last paragraph). In addition, Haug discloses that Membrane electrode assemblies with multiple layers of platinum outperform those with only a single layer (Page A285, Column 1, First Paragraph).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Dearnaley in view of Allen, Kirk-Othmer and Förnsel to use the multiple platinum layers as suggested by Haug to provide a desirable catalyst layer on a electrolyte membrane with the reasonable expectation of success because Dearnaley in view of Allen, Kirk-Othmer and Förnsel teaches an polymer electrolyte membrane with a platinum catalyst layer and Kamo teaches that multiple platinum layers increases the region of active platinum over a single platinum layer.

Art Unit: 1762

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP 07-116356 and JP 07-062546 teach of atmospheric plasma deposition using nitrogen gas as a carrier gas.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Turocy whose telephone number is (571) 272-2940. The examiner can normally be reached on Monday-Friday 8:30-6:00, No 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Turocy
AU 1762



TIMOTHY MEEKS
SUPERVISORY PATENT EXAMINER